

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LEROY SIMMONS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:11CV00542 SNLJ
)	
MICHAEL S. BOWERSOX,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before me on the petition for writ of habeas corpus filed by Petitioner Leroy Simmons. I referred this matter to United States Magistrate Judge David D. Noce, for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b). On August 14, 2013, Judge Noce filed his recommendation that Simmon's habeas petition should be denied.

No objections to Judge Noce's Report and Recommendation were filed. After careful consideration, I will adopt and sustain the thorough reasoning of Judge Noce and deny Simmon's habeas petition for the reasons stated in the Report and Recommendation dated August 14, 2013. I have also considered whether to issue a certificate of appealability. To grant a certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a Court could resolve the issues differently, or the issues deserve further proceedings. *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997) (citing *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994)). Because Simmons has not made such a showing in this case, I will not issue a certificate of appealability.


Accordingly,

IT IS HEREBY ORDERED that Judge Noce's Report and Recommendation, #12, filed on August 14, 2013 is adopted and sustained in its entirety.

IT IS FURTHER ORDERED that Petitioner Leroy Simmon's Petition for Writ of Habeas Corpus, #1, is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability. A separate Judgment in accordance with this Memorandum and Order is entered this same date.

Dated this 3rd day of September, 2013.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE